

APPLICATION Nos.6605,6606,6607 and 6608 OF 2018
IN
C.S.NO.721 OF 2016

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RESERVED ON	08.10.2018
DELIVERED ON	01.09.2020

M.GOVINDARAJ, J.

A.No.6605 of 2018 is filed to reject the plaint filed in C.S.No.721/2016.

A.No.6606 of 2018 is filed to dismiss the suit as no leave has been obtained from this Court.

A.No.6607 of 2018 is filed to strike off the names of the plaintiff Nos.2 to 5 from the plaint.

A.No.6608 of 2018 is filed to strike off the names of the respondents 6 to 15/defendants 2 to 11 from the plaint.

2. The suit is filed by the respondents to

a) declare the share holders agreement dated 13.02.2015 executed by defendant Company Suzlon Compay Limited as null and void.

b) Grant a permanent injunction restraining the defendants from

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passing any resolution on Agenda No.9 in their 21 AGM dated 30.09.2016

c) Grant a permanent injunction restraining the defendants from acting upon on the share holders agreement dated 13.02.2015.

3. The cause of action reads as under:

“ The cause of action for the suit arises at Annasalai, Chennai where the defendants carries on business and when the agreement dated 13th February 2015 executed and circulated to the plaintiff and when the notice for AGM dated 30th September 2016 is sent and circulated to the plaintiff and when the same was published in the company's website and the defendant company is having its office is well within the jurisdiction of Hon'ble High Court of Judicature at Madras in Chennai.”

4. According to the respondent/plaintiff they have purchased the shares issued by the defendant company amounting to

1. first plaintiff Simon Solomon holds 1000 shares of Rs.2 each in dematerialized form DP id & Client Id No: IN3001637 41318979
2. Second plaintiff Ketan Kamadar holds 400000 shares of Rs.2 each in

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dematerialized form in account number 1201130000451068

3. Third plaintiff Tejal Kamdar holds 300000 shares of Rs.2 each in dematerialized form in account number 12011300451127

4. Fourth plaintiff Pravin Kamdar holds 300000 shares of Rs.2 each in dematerialized form in account number 1201130000451087

5. Fifth plaintiff Hasumati Kamdar holds 355000 shares of Rs.2 each in dematerialized form in account number 1201130000451072

5. The defendants company is engaged in the business of designing, developing manufacturing and supplying technologically advanced wind turbine generators. The plaintiffs came to know from various media reports that defendants company promoters has acted in a completely wrong and deceitful manner to accomplish their selfish interest and acts which are to the complete disadvantage of public share holders. In order to ensure the voting power they have acquired 19% of the shares in addition to 19% available with them. For that purpose they have entered into share holders agreement dated 13.02.2015, which is contra to the benefit of the company and its shareholders and hence the share holders agreements is not sustainable in the

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eyes of law.

6. Alleging various acts of mismanagement the plaintiffs have prayed for the reliefs above mentioned.

7. The respondents filed the above applications to reject the plaint filed in C.S.No.721/2016, to dismiss the suit as no leave has been obtained from this Court; to strike off the names of the plaintiff Nos.2 to 5 from the plaint and to strike off the names of the respondents 6 to 15/defendants 2 to 11 from the plaint.

8. According to the applicants, the first Plaintiff was not even a share holder of the applicant when the share holders agreement dated 13.02.2015 was entered into. Therefore, he has no locus or right to sue. As per Sec. 241 and 242 of the Companies Act, the National Company Law Tribunal has the exclusive jurisdiction to deal with the plaint in respect of the affairs of the company which is being conducted in a manner prejudicial or oppressive to any member of the company or in a manner prejudicial to interest of the

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company. Under Sec.242 of the Companies Act, the Tribunal has the power to deal with all these prejudicial or oppressive conduct of the affairs of the company against any member or members of Public interest. Therefore, the jurisdiction falls exclusively under the National Company Law Tribunal under Sec.242. Apart from this, the suit is barred by Sec.430 of the Companies Act, Therefore, the Civil Court jurisdiction is ousted from taking cognizance of these matters which falls within the exclusive jurisdiction of National Company Law Tribunal. Therefore, the suit is not at all maintainable before this Court.

9. Further, it is contended that the first plaintiff having no locus standi has taken support of plaintiffs 2 to 5, in fact plaintiffs 2 to 5 do not have any registered office or corporate office or any business within the jurisdiction of this Court. Therefore, the plaintiffs 2 to 5 carrying on business at Mumbai have no locus standi to present the plaint within the jurisdiction of this Court. They have not even take leave of this Court to sue.

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10. Even assuming that they are trading in Chennai, the plaintiffs have not disclosed in what capacity they are trading in Chennai and the nature of trading activities carried on by them. Without specifically pleading about the same, they cannot claim any action said to have arisen at Chennai. The share holders agreement dated 13.02.2015 was challenged by way of a suit in Mumbai by some disgruntled elements. Mumbai Court refused to grant relief. Therefore, they approached this Court with an illusory cause of action which is nothing but forum shopping. The share holders agreement entered at Mumbai between the defendants. Before filing the suit they have not obtained leave to sue against the defendants. Therefore, the plaint has to be struck off.

11. Further, under Sec. 244 of the Companies Act the right to apply under Sec. 241 is defined. The plaintiffs have mere 0.027012% of shares capacity. After the share holding agreement, they purchased shares and on the date of the suit the plaintiffs possess 0.055% of the total paid up share capital of the defendant company. Therefore, the plaintiffs are not entitled to maintain the suit in view of Sec.244 of the Companies Act.

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12. Learned Senior Counsel appearing for the applicant would rely on the judgment of the Hon'ble Supreme Court in Morgan Stanley Mutual Fund vs. Kartick Das, 1994 4 SCC 225 and the judgment of this Court in O.A No.772 and 773 of 2013 in A.No.4693 of 2013 in C.S.No.540 of 2013 dated 20.03.2015 and C.R.P.Nos. 427 and 428 of 2016 dated 22.02.2016.

13. On the other hand, the learned counsel appearing for the respondents/plaintiffs would contend that the cause of action of the suit arose within the jurisdiction of this Hon'ble Court as the applicant/defendant's office situated at 104 first floor, Delta Wing, Raheja Towers, 177 Anna Salai, Chennai-600 002 and they carry on their day to day business in Chennai. When the share holders agreement dated 13.02.2015 was circulated at Chennai and when the Annual General Body meeting notice dated 30.09.2016 was sent and circulated at Chennai as well as published at official website confers jurisdiction on the plaintiffs to maintain the suit. Apart from this, the shares are listed and traded at various stock exchanges which include Madras stock exchange also. Therefore, this Court has jurisdiction to entertain the suit.

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14. Learned counsel appearing for the respondents has drawn the attention of this Court to the various irregularities in the affairs of the company and that the oppression and mismanagement had taken place.

15. The respondents 6 to 15 and defendants 2 to 11 in the plaint are necessary parties and therefore their names cannot be struck off from the plaint. Further, when the suit is not maintainable by the plaintiffs before the Company Law Tribunal, for redressal of grievances they have to approach this Court under common law remedy. In support of their arguments learned counsel for the respondent/plaintiff would rely on the judgment of this Court in C.R.P.(PD)No.2009 and 2833 of 2012, K.Saravanan vs. M/s. Cosmopolis Properties Pvt Ltd and Others and 2008 (3) MLJ 1, Wipro Ltd vs. Oushadha Chandrika Ayurvedic India (P) Ltd.

16. I have heard the submissions of both sides.

17. On the face of it, a reading of the entire plaint discloses that the subject matter of the suit revolves around oppression and mismanagement in

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respect of the affairs of the company prejudicial to its share holders. It is well settled that the averments made in the plaint are germane for deciding the issue with respect to rejection of plaint. For that purpose the averments cannot be segregated, dissected or a specific averment shall be culled out from the plaint for the purpose of rejecting the plaint as held by the Hon'ble Supreme Court. At the risk of repetition, it is observed that , a wholesome reading of the plaint discloses that from the cause of action till the relief sought for by the plaintiff revolve only around the alleged irregular designs and manipulation of taking control over the shares and thereby the outcome of the Annual General Body meeting. Therefore, it is no doubt that the entire plaint averments deals only with oppression and mismanagement of the affairs of the company against its members. In the matters of oppressions and mismanagement in respects of shares, exclusive jurisdiction, in view of the Sec.241 and 242 of the Companies Act falls under the National Company Law Tribunal. The above dispute is not of Civil nature, to be entertained by this Court, but one to be decided by a specialised forum constituted for that purpose. In such matters the jurisdiction of the Civil courts are ousted.

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18. The judgment relied on by the learned counsel for the respondent/plaintiff in K.Saravanan vs. M/s. Cosmopolis Properties Pvt Ltd and Others in C.R.P.(PD)No.2009 and 2833 of 2012 dated 31.08.2012, wherein it is held as under:

“16. Before going into that aspect, I want to make it clear that having regard to the judgments referred to above viz., (2009) 4 SCC 299 and AIR 2003 SC 2696 cited supra, the civil courts have got jurisdiction to entertain suits of civil nature unless the same is expressly or impliedly barred by statute. Further, a reading of section 2(11) of the Companies Act makes it clear that the court having jurisdiction under the Companies Act with respect to that matter relating to that Act, is the court as provided in Section 10 namely High Court or District Court. Section 10 of the Companies Act deals with the jurisdiction of the court and therefore, the Company Court has got jurisdiction to decide all matters which are to be dealt with under the provisions of the Companies Act in respect of those matters the civil courts have no jurisdiction and in respect of other matters which are not coming within the exclusive jurisdiction of the Company Court, the civil

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court has got jurisdiction.

19. In the above paragraph, this Court relied on the judgment of this Court in (2009) 4 SCC 299, Rajasthan State Road Transport Corporation Vs. Bal Mukund Bairwas and AIR 2003 SC 2696, Dwarka Prasad Agarwal Vs. Ramesh Chandra Agarwala, which held that the Civil Court has got jurisdiction to entertain suits of civil nature unless the same is expressly or impliedly barred by the statute. But in the instant case, the Company Law Tribunal has got jurisdiction to decide all the matters with regard to oppression and mismanagement. Therefore, the suit filed before this Court is not maintainable.

20. Section 430 of The Companies Act reads as under:

“ 430. Civil Court not to have jurisdiction

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the Tribunal or the Appellate Tribunal is empowered to determine by or under this Act or any other law for the time being in

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force and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act or any other law for the time being in force, by the Tribunal or the Appellate Tribunal.

21. A reading of Sec.430 would show that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which a Tribunal is empowered to determine.

22. Section 241 and 242 of the Companies Act reads as under:

241. Application to Tribunal for relief in cases of oppression, etc

(1) Any member of a company who complains that—

(a) the affairs of the company have been or are being conducted in a manner prejudicial to public interest or in a manner prejudicial or oppressive to him or any other member or members or in a manner prejudicial to the interests of the

company; or

(b) the material change, not being a change brought about by, or in the interests of, any creditors, including debenture holders or any class of shareholders of the company, has taken place in the management or control of the company, whether by an alteration in the Board of Directors , or manager, or in the ownership of the company's shares , or if it has no share capital, in its membership, or in any other manner whatsoever, and that by reason of such change, it is likely that the affairs of the company will be conducted in a manner prejudicial to its interests or its members or any class of members, may apply to the Tribunal , provided such member has a right to apply under section 244, for an order under this Chapter.

(2) The Central Government, if it is of the opinion that the affairs of the company are being conducted in a manner prejudicial to public interest, it may itself apply to the Tribunal for an order under this Chapter.

(3) Where in the opinion of the Central

Government there exist circumstances suggesting that—

(a) any person concerned in the conduct and management of the affairs of a company is or has been in connection therewith guilty of fraud, misfeasance, persistent negligence or default in carrying out his obligations and functions under the law or of breach of trust;

(b) the business of a company is not or has not been conducted and managed by such person in accordance with sound business principles or prudent commercial practices;

(c) a company is or has been conducted and managed by such person in a manner which is likely to cause, or has caused, serious injury or damage to the interest of the trade, industry or business to which such company pertains; or

(d) the business of a company is or has been conducted and managed by such person with intent to defraud its creditors, members or any other person or otherwise for a fraudulent or unlawful purpose or in a manner prejudicial to public interest, the Central Government may

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initiate a case against such person and refer the same to the Tribunal with a request that the Tribunal may inquire into the case and record a decision as to whether or not such person is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

(4) The person against whom a case is referred to the Tribunal under sub-section (3), shall be joined as a respondent to the application.

(5) Every application under sub-section (3)—

(a) shall contain a concise statement of such circumstances and materials as the Central Government may consider necessary for the purposes of the inquiry; and

(b) shall be signed and verified in the manner laid down in the Code of Civil Procedure, 1908, for the signature and verification of a plaint in a suit by the Central Government.

242. Powers of Tribunal

1) If, on any application made under section 241, the Tribunal is of the opinion—

(a) that the company's affairs have been or are

being conducted in a manner prejudicial or oppressive to any member or members or prejudicial to public interest or in a manner prejudicial to the interests of the company; and

(b) that to wind up the company would unfairly prejudice such member or members, but that otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Tribunal may, with a view to bringing to an end the matters complained of, make such order as it thinks fit.(Effective from September 9,2016)

(2) Without prejudice to the generality of the powers under sub-section (1), an order under that sub-section may provide for—

(a) the regulation of conduct of affairs of the company in future;

(b) the purchase of shares or interests of any members of the company by other members thereof or by the company;

(c) in the case of a purchase of its shares by the company as aforesaid, the consequent reduction

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of its share capital;(Effective from September 9,2016)

(d) restrictions on the transfer or allotment of the shares of the company;

(e) the termination, setting aside or modification, of any agreement, howsoever arrived at, between the company and the managing director , any other director or manager, upon such terms and conditions as may, in the opinion of the Tribunal, be just and equitable in the circumstances of the case;

(f) the termination, setting aside or modification of any agreement between the company and any person other than those referred to in clause (e) Provided that no such agreement shall be terminated, set aside or modified except after due notice and after obtaining the consent of the party concerned;

(3) A certified copy of the order of the Tribunal under sub-section (1) shall be filed by the company with the Registrar within thirty days of the order of the Tribunal.

(4) The Tribunal may, on the application of any

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party to the proceeding, make any interim order which it thinks fit for regulating the conduct of the company's affairs upon such terms and conditions as appear to it to be just and equitable.

(4A) At the conclusion of the hearing of the case in respect of sub-section (3) of section 241, the Tribunal shall record its decision stating therein specifically as to whether or not the respondent is a fit and proper person to hold the office of director or any other office connected with the conduct and management of any company.

23. In view of Sec.241 and 242 and Sec.430 of Companies Act there is a clear bar in entertaining the suit by the Civil Courts. Therefore, when the jurisdiction of the Civil Court is specifically barred by the Companies Act, the present suit is not maintainable. Hence, this Court has no hesitation to hold the above suit barred by law.

24. As contended by the learned Senior counsel, it is not stated in the plaint as to how first plaintiff has got a right to sue and as well as the nature

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of business carried on by the plaintiffs 2 to 5 within the jurisdiction of this Court. When there is no cause of action to file the suit, the plaint is liable to be rejected. It is further substantiated that as per Sec.244 of Companies Act, which reads as under:

244. 1) The following members of a company shall have the right to apply under section 241, namely:—

(a) in the case of a company having a share capital, not less than one hundred members of the company or not less than one-tenth of the total number of its members, whichever is less, or any member or members holding not less than one tenth of the issued share capital of the company, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;

(b) in the case of a company not having a share capital, not less than one-fifth of the total number of its members:

Provided that the Tribunal may, on an application made to it in this behalf, waive all or any of the requirements specified in clause (a) or

clause (b) so as to enable the members to apply under section 241.

Explanation.—For the purposes of this subsection, where any share or shares are held by two or more persons jointly, they shall be counted only as one member.

(2) Where any members of a company are entitled to make an application under subsection (1), any one or more of them having obtained the consent in writing of the rest, may make the application on behalf and for the benefit of all of them.

As per the above section the plaintiffs do not have any right to sue.

25. Admittedly, the plaintiffs have not obtained any leave to sue against the defendants. Therefore, without taking leave of this Court, filing of this case within the jurisdiction of this Court is not sustainable.

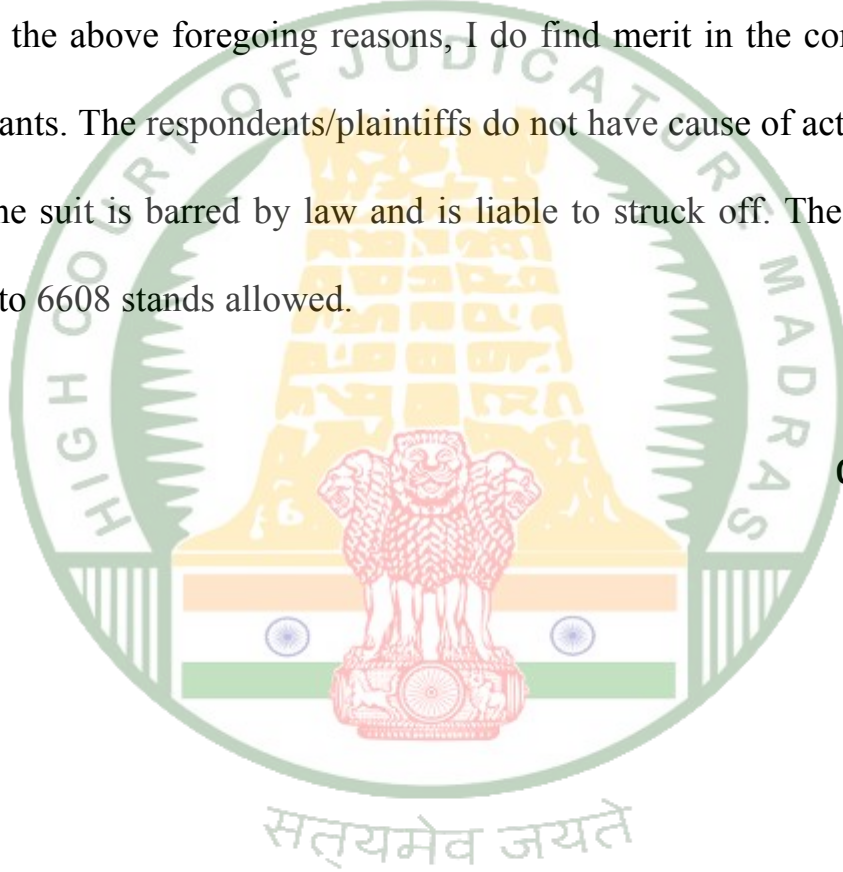
26. It is also not denied by the plaintiffs that similarly placed individual filed individual suit before the Court in Mumbai wherein interim orders were not granted. Thereafter, the present suit came to be filed in

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joining plaintiffs 2 to 5 at Madras will amount to forum shopping and a subterfuge thereby an abuse of process of law.

For the above foregoing reasons, I do find merit in the contentions of the applicants. The respondents/plaintiffs do not have cause of action, right to sue and the suit is barred by law and is liable to struck off. The application nos.6605 to 6608 stands allowed.

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Pre-delivery order in

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